

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

In re:

Chapter 7

Lee David Mork, Jr.,

Case No. 23-12218-cjf

Debtor.

Lee David Mork, Jr.,

Plaintiff,

Adversary No. _____ - cjf

v.

United States Department of Education,

Defendant.

**COMPLAINT TO DETERMINE DISCHARGEABILITY OF STUDENT LOAN DEBT
PURSUANT TO 11 U.S.C. § 523(a)(8)**

Plaintiff, Lee David Mork, Jr. (hereinafter "Plaintiff"), by his attorneys, Krekeler Law, S.C. by Attorney Noe J. Rincon, hereby brings this Complaint against Defendant, and alleges as follows:

JURISDICTION & VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. Secs. 1334 and 157(b).
2. Venue is proper pursuant to 28 U.S.C. § 1409 because this proceeding arises in and relates to a bankruptcy case pending in this district.
3. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).
4. Bankruptcy Rules 7001 (6), (7), and (9) require an action of this nature to be filed as an adversary proceeding.

5. Plaintiff consents to the entry of a final judgment by a United States Bankruptcy Court judge.
6. Plaintiff filed his petition for relief under Chapter 7 of the Bankruptcy Code on December 11, 2023 (the "Chapter 7 Case").

INTRODUCTION

7. Plaintiff seeks to discharge student loan debts that Plaintiff owes Defendants pursuant to 11 U.S.C. §523(a)(8).

GENERAL ALLEGATIONS

8. Plaintiff is an adult resident of Wisconsin, an unmarried individual, and veteran who resides at 601 Sand Pearl Lane, APT 523, Madison, Wisconsin 53711.
9. Plaintiff is a citizen of Wisconsin residing in the Western District of Wisconsin.
10. United States Department of Education ("DOE") is a Department of the United States government with a principal office at 400 Maryland Avenue SW, Washington, D.C. 20202.
11. DOE is represented by Theresa M. Anzivino with a principal office at 222 West Washington Avenue, Suite 700, Madison Wisconsin 53703.
12. DOE is the holder of the student loans which Plaintiff seeks to discharge.

The Student Loans

13. The outstanding balance of the student loans which Plaintiff seeks to discharge in this adversary proceeding is about \$190,269.00 ("Student Loans").
14. The calculated monthly payment for Plaintiff's Student Loans based on a Standard Repayment Plan ("Standard Payment") is estimated to be about \$2,018.00 according to the Federal Student Aid Loan Repayment Simulator, attached herein as Exhibit A.

Education

15. Plaintiff obtained student loans from DOE for the purpose of obtaining a bachelor's degree from Herzing University in criminal justice studies. Plaintiff attended Herzing University and graduated in 2015.
16. After receiving his bachelor's degree in criminal justice studies, Plaintiff was unable to obtain employment in his field of study. Plaintiff elected to pursue a master's degree in public safety in the hopes of bolstering his marketability and employment prospects. Plaintiff received his master's degree in public safety from Herzing University in 2019.
17. Plaintiff utilized the Student Loans to pay for all his educational expenses related to his bachelor's and master's degree programs.

Employment

18. Plaintiff has been gainfully employed as of December of 2023, but not within the field of his college degrees. Prior to the filing of Plaintiff's petition, Plaintiff was unemployed for the preceding five months.
19. Plaintiff has searched for jobs within his desired field and where he could utilize his undergraduate and graduate degrees. Such jobs include working as an emergency management and response coordinator, community service officer, correctional officer, emergency dispatcher, public safety telecommunicator, customs compliance, and security guard.
20. Plaintiff has applied for about 50-70 jobs across several industries within the scope of his field of education but has not been selected for any of these positions.
21. Plaintiff is currently employed as a Nursing Assistant at the William S. Middleton Veterans' Hospital, located in Madison, Wisconsin.

22. Plaintiff is currently seeking his associate degree in nursing in the hopes of transition into a full-time nursing position at his current place of employment. Plaintiff is attending Madison Area Technical College for this degree and is seeking reimbursement from his employer for the expenses incurred in pursuing this degree.

Financial and Life Circumstances - Minimal Standard of Living

23. Plaintiff does not have the present ability to pay the Student Loans while maintaining a minimal standard of living for himself if forced to repay the Student Loans.

24. Plaintiff, prior to filing a petition under Chapter 7, was unemployed and relied on rental and food assistance to provide for his expenses.

25. The Plaintiff's income and expenses are shown in the Plaintiff's bankruptcy schedules I and J, attached hereto and incorporated herein as Exhibit B.

26. Plaintiff's monthly household living expenses do not exceed the standards as set forth by the Internal Revenue Service Collection Financial Standards (the "National Standards").

27. Plaintiff has resided at his current address in Wisconsin since May of 2023.

28. On average, Plaintiff's monthly expenses exceed his monthly income since Plaintiff no longer receives public assistance and must rely solely on his income for support.

29. Plaintiff works part-time and is seeking to be gainfully employed full-time upon the completion of his associate degree program.

Future Inability to Pay

30. Plaintiff's present inability to pay is likely to persist in the future, preventing the Plaintiff from maintaining a minimal standard of living for a significant portion of the repayment period if forced to repay the Student Loans, due to the following:

- a. Plaintiff has been unable to obtain employment in the fields in which he is educated in;
- b. Plaintiff's income is unlikely to increase to an amount necessary to make sufficient payments on the Student Loans if Plaintiff were to seek a position for which he is educated for, with such position resulting in an income at or below Plaintiff's current income from employment;
- c. Plaintiff's completion of an associate degree in nursing may modestly increase his income, though such an increase would be insufficient to make adequate payments on the Student Loans.
- d. It is unlikely that Plaintiff could complete another degree or achieve a higher salary for doing so in his new career path, given the costs of attending higher education together with the cost of his Standard Payment each month or the interest on his Student Loans, along with his age and the physical demands of his new career path.
- e. Plaintiff owns modest personal belongings and owns no assets worth a significant amount other than his 2009 Yamaha Roadster motorcycle, which at the time of filing was in the process of being repossessed by the secured creditor to whom payments are owed. Plaintiff intends to surrender his motorcycle upon the conclusion of his bankruptcy case. Plaintiff recently purchase a vehicle post-petition to enable him to commute and retain his employment.

Good Faith Effort to Repay

31. Plaintiff has made good faith efforts to earn income, manage expenses and repay the Student Loans.

32. Plaintiff has obtained employment outside the skillset of his criminal justice studies and public safety degrees in order to maximize his income.

33. Plaintiff has made voluntary payments on the Student Loans as they are due.

34. Upon information and belief, Plaintiff has never been in default on the Student Loans.

35. Plaintiff is currently participating in the Income Driven Repayment Program offered by DOE, with payments resuming in October 2024.

**CLAIM FOR RELIEF - DETERMINATION OF DISCHARGEABILITY OF
STUDENT LOAN OBLIGATIONS. 11 U.S.C. § 523(8)**

35. Plaintiff hereby realleges and incorporate by reference the allegations set forth in paragraphs 1 through 34.

36. Plaintiff is entitled to discharge of the Student Loans owed to Defendant in whole because repayment would constitute an "undue hardship" on Plaintiff.

37. Further, Plaintiff meets the standard for discharge of the Student Loans under § 523(a)(8) of the Bankruptcy Code and the test set forth under *Brunner v.*

New York State Higher Educ. Servs. Corp., 831 F.2d 395 (2d Cir. 1987), as adopted by the Seventh Circuit in *In re Roberson*, 999 F.2d 395 (7th Cir. 1993).

WHEREFORE, Lee David Mork, Jr., respectfully requests:

- a. Declaratory and injunctive relief;
- b. Determination of in favor of dischargeability regarding his Student Loans;

- c. An order discharging the Student Loans in whole upon the Plaintiff having received an Order of Discharge in his Chapter 7 Case; and
- d. All other such relief as the court deems just.

Dated this 14th day of March 2024.

KREKELER LAW, S.C.

Attorneys for Lee David Mork, Jr.,

A handwritten signature in black ink, appearing to read 'Noe J. Rincon', is written over a horizontal line.

Noe J. Rincon
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Madison, WI 53711
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Standard Repayment Plan

Summary

Any borrower with eligible federal student loans may choose this plan.

Monthly Payment

\$2,018

Estimated Total To Be Paid

\$242,172

Paid Off Date

Feb 2034

Estimated Forgiveness Amount

\$0

Plan Type

Fixed Repayment Plan

Loan Term

10 Years

Eligible Loans

Loans from the William D. Ford Federal Direct Loan (Direct Loan) Program and the Federal Family Education Loan (FFEL) Program are eligible.

Advantages

- ☒ You'll save on interest. In contrast, income-driven repayment (IDR) plans may offer lower monthly payments, but they are spread over a much longer period, so they usually incur more interest.
- ☒ You're not locked into your repayment plan. If you're struggling to make payments, you can switch into any other plan you qualify for.

Disadvantages

- ☐ This is not a good option if you're seeking Public Service Loan Forgiveness (PSLF) because you'll have paid off your loan after 120 qualifying payments.
- ☐ Your monthly payments will likely be higher than some other options.
- ☐ Unlike IDR plans, loan forgiveness is not available.

Monthly Payment

\$2,018



Under the Standard Repayment Plan, your payments will be a fixed amount of at least \$50 per month.

You pay the entirety of your loan via fixed payments over your loan term—10 years for most loans, but it is usually longer for consolidation loans.

Pay less in interest! You can reduce your interest rate by 0.25% if you sign up for auto-debit through your servicer. Contact Your Servicer



\$3,000

Total Paid **\$242,172**

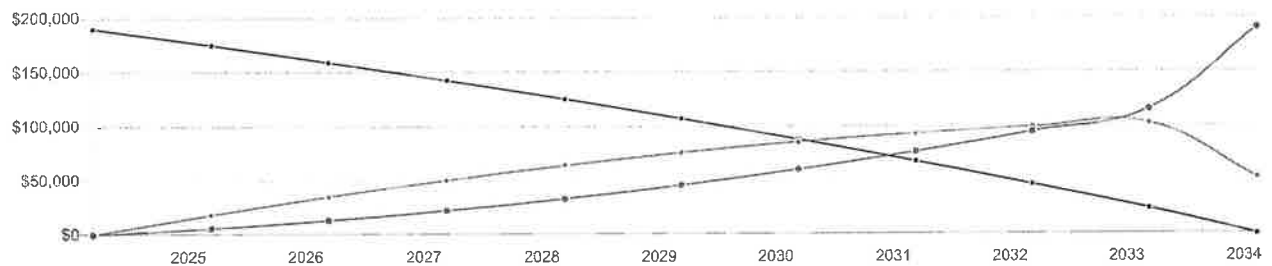
The total amount paid over time is equal to the amount of your original principal plus the interest you pay over your repayment period.

Simulate Additional Payments. See how a one-time payment or even as little as \$10 extra a month can reduce the amount you pay in interest.

\$190,269 **\$51,903**
Principal Paid ⓘ Interest Paid ⓘ

Loan Amortization Chart

Principal Paid Interest Paid Remaining Balance



[View Full Amortization Schedule](#)

Estimated Forgiveness Amount **\$0**

Plan Type **Fixed Repayment Plan**

Loan Term **10 Years**

Eligibility

How do I apply for the Standard Repayment Plan?

You can [contact your loan servicer](#) to request the Standard Repayment Plan.



Contact Your Loan Servicer. You can contact your loan servicer if you have any questions about your repayment plan options.



Fill in this information to identify your case:

Debtor 1 Lee David Mork, Jr.

Debtor 2
(Spouse, if filing) _____

United States Bankruptcy Court for the: WESTERN DISTRICT OF WISCONSIN

Case number 3-23-12218
(If known)

Check if this is:

- ☐ An amended filing
- ☐ A supplement showing postpetition chapter 13 income as of the following date:

MM / DD / YYYY

Official Form 106I

Schedule I: Your Income

12/15

Be as complete and accurate as possible. If two married people are filing together (Debtor 1 and Debtor 2), both are equally responsible for supplying correct information. If you are married and not filing jointly, and your spouse is living with you, include information about your spouse. If you are separated and your spouse is not filing with you, do not include information about your spouse. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Describe Employment

1. Fill in your employment information.

If you have more than one job, attach a separate page with information about additional employers.

Include part-time, seasonal, or self-employed work.

Occupation may include student or homemaker, if it applies.

Employment status

Occupation

Employer's name

Employer's address

Debtor 1

- ☒ Employed
- ☐ Not employed

Nursing Assistant

VA Hospital

2500 Overlook Terrace
Madison, WI 53705-2254

Debtor 2 or non-filing spouse

- ☐ Employed
- ☐ Not employed

How long employed there?

December 2023 to
present

Part 2: Give Details About Monthly Income

Estimate monthly income as of the date you file this form. If you have nothing to report for any line, write \$0 in the space. Include your non-filing spouse unless you are separated.

If you or your non-filing spouse have more than one employer, combine the information for all employers for that person on the lines below. If you need more space, attach a separate sheet to this form.

2. List monthly gross wages, salary, and commissions (before all payroll deductions). If not paid monthly, calculate what the monthly wage would be.
3. Estimate and list monthly overtime pay.
4. Calculate gross income. Add line 2 + line 3.

For Debtor 1

For Debtor 2 or
non-filing spouse

2.	\$	<u>3,864.90</u>	\$	<u>N/A</u>
3.	+\$	<u>0.00</u>	+\$	<u>N/A</u>
4.	\$	<u>3,864.90</u>	\$	<u>N/A</u>



Debtor 1 Lee David Mork, Jr.Case number (if known) 3-23-12218

	For Debtor 1	For Debtor 2 or non-filing spouse
Copy line 4 here	4. \$ <u>3,864.90</u>	\$ <u>N/A</u>
5. List all payroll deductions:		
5a. Tax, Medicare, and Social Security deductions	5a. \$ <u>293.19</u>	\$ <u>N/A</u>
5b. Mandatory contributions for retirement plans	5b. \$ <u>144.84</u>	\$ <u>N/A</u>
5c. Voluntary contributions for retirement plans	5c. \$ <u>0.00</u>	\$ <u>N/A</u>
5d. Required repayments of retirement fund loans	5d. \$ <u>0.00</u>	\$ <u>N/A</u>
5e. Insurance	5e. \$ <u>0.00</u>	\$ <u>N/A</u>
5f. Domestic support obligations	5f. \$ <u>0.00</u>	\$ <u>N/A</u>
5g. Union dues	5g. \$ <u>44.42</u>	\$ <u>N/A</u>
5h. Other deductions. Specify: <u>Federal Group Life Insurance</u>	5h.+ \$ <u>14.56</u>	\$ <u>N/A</u>
<u>Thrift Savings Plan</u>	\$ <u>164.60</u>	\$ <u>N/A</u>
<u>Dental Insurance</u>	\$ <u>7.65</u>	\$ <u>N/A</u>
<u>Vision Insurance</u>	\$ <u>24.81</u>	\$ <u>N/A</u>
6. Add the payroll deductions. Add lines 5a+5b+5c+5d+5e+5f+5g+5h.	6. \$ <u>694.07</u>	\$ <u>N/A</u>
7. Calculate total monthly take-home pay. Subtract line 6 from line 4.	7. \$ <u>3,170.83</u>	\$ <u>N/A</u>
8. List all other income regularly received:		
8a. Net income from rental property and from operating a business, profession, or farm Attach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income.	8a. \$ <u>0.00</u>	\$ <u>N/A</u>
8b. Interest and dividends	8b. \$ <u>0.00</u>	\$ <u>N/A</u>
8c. Family support payments that you, a non-filing spouse, or a dependent regularly receive Include alimony, spousal support, child support, maintenance, divorce settlement, and property settlement.	8c. \$ <u>0.00</u>	\$ <u>N/A</u>
8d. Unemployment compensation	8d. \$ <u>0.00</u>	\$ <u>N/A</u>
8e. Social Security	8e. \$ <u>0.00</u>	\$ <u>N/A</u>
8f. Other government assistance that you regularly receive Include cash assistance and the value (if known) of any non-cash assistance that you receive, such as food stamps (benefits under the Supplemental Nutrition Assistance Program) or housing subsidies. Specify:	8f. \$ <u>0.00</u>	\$ <u>N/A</u>
8g. Pension or retirement income	8g. \$ <u>0.00</u>	\$ <u>N/A</u>
8h. Other monthly income. Specify: <u>VA Benefits</u>	8h.+ \$ <u>165.92</u>	\$ <u>N/A</u>
9. Add all other income. Add lines 8a+8b+8c+8d+8e+8f+8g+8h.	9. \$ <u>165.92</u>	\$ <u>N/A</u>
10. Calculate monthly income. Add line 7 + line 9. Add the entries in line 10 for Debtor 1 and Debtor 2 or non-filing spouse.	10. \$ <u>3,336.75</u>	\$ <u>N/A</u>
11. State all other regular contributions to the expenses that you list in Schedule J. Include contributions from an unmarried partner, members of your household, your dependents, your roommates, and other friends or relatives. Do not include any amounts already included in lines 2-10 or amounts that are not available to pay expenses listed in Schedule J. Specify:	11. +\$ <u>0.00</u>	
12. Add the amount in the last column of line 10 to the amount in line 11. The result is the combined monthly income. Write that amount on the Summary of Schedules and Statistical Summary of Certain Liabilities and Related Data, if it applies	12. \$ <u>3,336.75</u>	Combined monthly income
13. Do you expect an increase or decrease within the year after you file this form? <input type="checkbox"/> No. <input checked="" type="checkbox"/> Yes. Explain:	Debtor received rental assistance through VRAP. Rental assistance provided through February 2024. Partial rental assistance of \$440 for March 2024. Rental assistance paid directly to landlord. Debtor received FoodShare benefits. However, Debtor is no longer eligible for FoodShare due to Debtor's new job; Debtor was unemployed for several months prior to filing.	

Fill in this information to identify your case:

Debtor 1 Lee David Mork, Jr.

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: WESTERN DISTRICT OF WISCONSIN

Case number 3-23-12218
(If known)

Check if this is:

- ☐ An amended filing
- ☐ A supplement showing postpetition chapter 13 expenses as of the following date:

MM / DD / YYYY

Official Form 106J

Schedule J: Your Expenses

12/15

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach another sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Describe Your Household

1. Is this a joint case?

☒ No. Go to line 2.

☐ Yes. Does Debtor 2 live in a separate household?

☐ No

☐ Yes. Debtor 2 must file Official Form 106J-2, *Expenses for Separate Household* of Debtor 2.

2. Do you have dependents? ☒ No

Do not list Debtor 1 and Debtor 2.

☐ Yes. Fill out this information for each dependent.....

Do not state the dependents names.

Dependent's relationship to Debtor 1 or Debtor 2

Dependent's age

Does dependent live with you?

☐ No

☐ Yes

☐ No

☐ Yes

☐ No

☐ Yes

☐ No

☐ Yes

3. Do your expenses include expenses of people other than yourself and your dependents? ☒ No
☐ Yes

Part 2: Estimate Your Ongoing Monthly Expenses

Estimate your expenses as of your bankruptcy filing date unless you are using this form as a supplement in a Chapter 13 case to report expenses as of a date after the bankruptcy is filed. If this is a supplemental *Schedule J*, check the box at the top of the form and fill in the applicable date.

Include expenses paid for with non-cash government assistance if you know the value of such assistance and have included it on *Schedule I: Your Income* (Official Form 106I.)

Your expenses

4. The rental or home ownership expenses for your residence. Include first mortgage payments and any rent for the ground or lot.

4. \$ 1,510.00

If not included in line 4:

4a. Real estate taxes

4a. \$ 0.00

4b. Property, homeowner's, or renter's insurance

4b. \$ 0.00

4c. Home maintenance, repair, and upkeep expenses

4c. \$ 50.00

4d. Homeowner's association or condominium dues

4d. \$ 0.00

5. Additional mortgage payments for your residence, such as home equity loans

5. \$ 0.00

Debtor 1 **Lee David Mork, Jr.**

Case number (if known) **3-23-12218**

6. Utilities:		
6a. Electricity, heat, natural gas	6a. \$	65.00
6b. Water, sewer, garbage collection	6b. \$	0.00
6c. Telephone, cell phone, Internet, satellite, and cable services	6c. \$	0.00
6d. Other. Specify: _____	6d. \$	0.00
7. Food and housekeeping supplies	7. \$	530.00
8. Childcare and children's education costs	8. \$	0.00
9. Clothing, laundry, and dry cleaning	9. \$	166.00
10. Personal care products and services	10. \$	140.00
11. Medical and dental expenses	11. \$	79.00
12. Transportation. Include gas, maintenance, bus or train fare. Do not include car payments.	12. \$	250.00
13. Entertainment, clubs, recreation, newspapers, magazines, and books	13. \$	50.00
14. Charitable contributions and religious donations	14. \$	0.00
15. Insurance. Do not include insurance deducted from your pay or included in lines 4 or 20.		
15a. Life insurance	15a. \$	0.00
15b. Health insurance	15b. \$	0.00
15c. Vehicle insurance	15c. \$	36.00
15d. Other insurance. Specify: _____	15d. \$	0.00
16. Taxes. Do not include taxes deducted from your pay or included in lines 4 or 20. Specify: _____		
	16. \$	0.00
17. Installment or lease payments:		
17a. Car payments for Vehicle 1	17a. \$	0.00
17b. Car payments for Vehicle 2	17b. \$	0.00
17c. Other. Specify: TitleMax of WI - 2002 Yamaha Roadster	17c. \$	186.00
17d. Other. Specify: _____	17d. \$	0.00
18. Your payments of alimony, maintenance, and support that you did not report as deducted from your pay on line 5, Schedule I, Your Income (Official Form 106I).		
	18. \$	0.00
19. Other payments you make to support others who do not live with you.		
	\$	0.00
Specify: _____		
20. Other real property expenses not included in lines 4 or 5 of this form or on Schedule I: Your Income.		
20a. Mortgages on other property	20a. \$	0.00
20b. Real estate taxes	20b. \$	0.00
20c. Property, homeowner's, or renter's insurance	20c. \$	0.00
20d. Maintenance, repair, and upkeep expenses	20d. \$	0.00
20e. Homeowner's association or condominium dues	20e. \$	0.00
21. Other: Specify: _____	21. +\$	0.00
22. Calculate your monthly expenses		
22a. Add lines 4 through 21.	\$	3,062.00
22b. Copy line 22 (monthly expenses for Debtor 2), if any, from Official Form 106J-2	\$	
22c. Add line 22a and 22b. The result is your monthly expenses.	\$	3,062.00
23. Calculate your monthly net income.		
23a. Copy line 12 (your combined monthly income) from Schedule I.	23a. \$	3,336.75
23b. Copy your monthly expenses from line 22c above.	23b. -\$	3,062.00
23c. Subtract your monthly expenses from your monthly income. The result is your <i>monthly net income</i> .	23c. \$	274.75

24. Do you expect an increase or decrease in your expenses within the year after you file this form?
For example, do you expect to finish paying for your car loan within the year or do you expect your mortgage payment to increase or decrease because of a modification to the terms of your mortgage?

☐ No.

☒ Yes.

Explain here: **Rental assistance will end in March 2024 with the final payment towards Debtor's rent being \$440. Debtor's rent will increase to \$1585 per month beginning April 2024.**

Debtor's food assistance to end based on the Debtor's income exceeding maximum allowed gross monthly income for FoodShare.

Debtor is currently dependent on public transportation and ridesharing. Debtor to purchase a vehicle, which will increase his monthly travel expenses

Fill in this information to identify your case:

Debtor 1 Lee David Mork, Jr.
First Name Middle Name Last Name

Debtor 2
(Spouse if, filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: WESTERN DISTRICT OF WISCONSIN

Case number 3-23-12218
(if known)

☐ Check if this is an amended filing

Official Form 106Dec

Declaration About an Individual Debtor's Schedules

12/15

If two married people are filing together, both are equally responsible for supplying correct information.

You must file this form whenever you file bankruptcy schedules or amended schedules. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$250,000, or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Sign Below

Did you pay or agree to pay someone who is NOT an attorney to help you fill out bankruptcy forms?

☒ No

☐ Yes. Name of person _____

Attach *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 119)

Under penalty of perjury, I declare that I have read the summary and schedules filed with this declaration and that they are true and correct.

X /s/ Lee David Mork, Jr.

Lee David Mork, Jr.

Signature of Debtor 1

X _____

Signature of Debtor 2

Date December 26, 2023

Date _____